

IP 99-0057-CR 1 H/F USA v Hand
Magistrate Kennard P. Foster

Signed on 08/04/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 99-57-CR -01 (H/F)
)	
FREDERICK LEE HAND,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable David F. Hamilton, Judge, on August 3, 2005, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on June 10, 2003, and to submit to Judge Hamilton proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on August 3, 2005 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Barry Glickman, Assistant United States Attorney, for Brad Blackington, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, Victoria Bailey, Office of Indiana Federal Community Defender. Bob Akers, U. S. Parole and Probation officer, appeared and participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Victoria Bailey, Office of Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Hand in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Hand and his counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.

3. Mr. Hand was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Hand would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Hand had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Hand had violated the alleged condition or conditions of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Hamilton's designation on August 3, 2005.

7. Mr. Hand stated his readiness to waive the preliminary hearing at each hearing regarding the Petition then under consideration. Mr. Hand then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Hand, by counsel, stipulated that he committed violations of specifications set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed June 10, 2003, described as follows:

Violation Number

Nature of Noncompliance

1

“The defendant shall not commit another federal, state, or local crime.”

On June 2, 2003, U.S. Probation Officer Robert Frommeyer of the Southern District of Ohio met with a drug agent from the Northern Kentucky Drug Strike Force. USPO Frommeyer was advised that the offender has sold crack cocaine to a confidential informant on three separate occasions in May 2003. The first buy occurred on May 8, 2003, in Newport, Kentucky. The buy involved a quarter ounce of crack cocaine in exchange for \$240. The drug agent photocopied the money involved in the buy prior to the transaction. The drug agent initially made contact with Randall Griffith, a convicted felon in Kentucky. Griffith contacted the offender by telephone, and a meeting was set up. The offender arrived in a 1999 Cadillac STS. Griffith exited the undercover agent's vehicle with the buy money, and got into the offender's vehicle. Griffith returned with the crack cocaine, which later field tested positive for cocaine. The cocaine was sent to the lab for confirmation and had an actual weight of 5.1 grams.

The second transaction occurred on May 12, 2003, in Newport, Kentucky, and was done in similar fashion as the first transaction. The deal involved a half ounce of crack cocaine for \$500. Again, the money was photocopied prior to the transaction. The deal took place at a McDonald's restaurant with Griffith again as the "go between." The offender arrived at the McDonald's in the same Cadillac, and went into the restroom with Griffith. Griffith gave the offender the money in exchange for the crack cocaine, which field tested positive for cocaine. The cocaine was sent to the lab for confirmation testing and had an actual weight of 7.5 grams.

The third transaction took place on May 13, 2003, in Newport, Kentucky. The deal involved one ounce of crack cocaine for \$900. The drug agents intended on doing the drug buy and then arresting both Griffith and the offender. Griffith and the offender went into a restaurant for the exchange. As they exited the restaurant, the police swarmed the parking lot. The offender fled the scene in his vehicle and a high speed chase ensued. The offender drove across the river into Cincinnati, Ohio, where he abandoned his vehicle. He fled on foot and eluded the police. The vehicle was recovered and was registered to Frederick L. Hand.

As part of the initial investigation, the offender was under surveillance and was found to stay at 205 Blue Grass Drive, #23A, Southgate,

Kentucky. This apartment was leased by Larvonja Jackson, the offender's girlfriend. On May 13, 2003, after the offender eluded the police, a consent search was conducted at the apartment. The search revealed the presence of the offender's clothing in the closet, the presence of a small amount of crack cocaine, and \$9,000 in cash. Further investigation revealed all of the photographed money used in the drug transactions was included in the \$9,000. A warrant has been issued by the State of Kentucky and the offender remains a fugitive.

2 **“The defendant shall not illegally possess a controlled substance.”**

As reported above, the offender was involved in three crack cocaine transactions on May 8, 2003; May 12, 2003; and May 13, 2003. This is also a violation of 18 U.S.C. §3583(g)(1), which requires mandatory revocation.

3 **“The defendant shall notify the probation officer ten days prior to any change in residence or employment.”**

The offender listed his address as 2621 Montana Avenue, #9, Cincinnati, Ohio, on his monthly supervision reports since the inception of his supervision. The offender was under surveillance and found to have clothing at the residence of 205 Blue Grass Drive, #23A, Southgate, Kentucky. The offender failed to notify the probation officer that he had an additional residence.

4 **“The defendant shall not leave the judicial district without the permission of the Court or probation officer.”**

On May 8, 2003; May 12, 2003; and May 13, 2003, the offender was in Newport, Kentucky, without the permission or knowledge of the probation officer. The offender had previously been instructed to contact the probation officer by telephone anytime he intended to travel into the Eastern District of Kentucky that did not involve employment.

5 **“The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.”**

The offender was associating with Randall Griffith, a convicted felon, without the knowledge or permission of the probation officer. Both

were engaged in criminal activity (drug trafficking) on May 8, 2003; May 12, 2003; and May 13, 2003.

- 6 **“The defendant shall participate in a program of testing and treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.”**

On May 15, 2003, the offender failed to submit a urine specimen as required and scheduled. This is also a violation of 18 U.S.C. §3583(g)(3), which requires mandatory revocation.

- 7 **“The defendant shall report to the probation officer as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.”**

Record indicates the offender purchased a 1999 Cadillac STS on April 18, 2003, in Butler County, Ohio. The offender failed to report the purchase the vehicle as required, and did not indicate any possession of or use of a 1999 Cadillac on his April 2003 monthly supervision report.

The Court placed Mr. Hand under oath and directly inquired of Mr. Hand whether he admitted violations of the specifications of his supervised release set forth above. Mr. Hand stated that he admitted the above violations of his supervised release as set forth above. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the parties further stipulated the following:

- 1) Mr. Hand has a relevant criminal history category of III. *See*, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation was stipulated to by the parties to be a Grade A violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Hand is 18-24 months.

4) The parties agreed on the appropriate disposition of the case as follows:

The defendant be sentenced to a period of confinement of 18 months to the custody of the Attorney General, to be served consecutively to his sentence in the United States District Court in Kentucky. After service of the sentence, the defendant shall not be subject to supervised release as a result of the sentence from the United States District Court for the Southern District of Indiana **only**.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED** and Frederick Lee Hand is sentenced to the custody of the Attorney General or his designee for a period of 18 months, to be served consecutively to his sentence in the United States District Court in Kentucky. After service of his sentence, the defendant shall not be subject to supervised release as a result of the sentence from the United States District Court for the Southern District of Indiana **only**.

Counsel for the parties and Mr. Hand stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Hand's supervised release and the sentence imposed of

imprisonment of 18 months, in the custody of the Attorney General or his designee, said sentence to run consecutively to his sentence in the United States District Court in Kentucky. There shall be no term of supervised release at the conclusion of Mr. Hand's term of incarceration as a result of the sentence from the United States District Court for the Southern District of Indiana **only**.

The Magistrate Judge requests that Robert Akers, U. S. Parole and Probation Officer, prepare for submission to the Honorable David F. Hamilton, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

IT IS SO RECOMMENDED this 4th day of August, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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U. S. Marshal Service